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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/176,866 10/22/98 YOUNG

J 6996

001688 QM22/0509  
POLSTER, LIEDER, WOODRUFF & LUCCHESI  
763 SOUTH NEW BALLAS ROAD  
ST. LOUIS MO 63141-8750

EXAMINER

ART UNIT	PAPER NUMBER
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DEMILLE, D  
3764  
DATE MAILED:11  
05/09/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/176,866	YOUNG, JAMES V.
<b>Examiner</b>	<b>Art Unit</b>	
Lori Amerson	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## ***Office Action Summary***

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 21 February 2001 .

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-7, 9, and 15-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-7, 9, and 15-20 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.

12)  The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

15)  Notice of References Cited (PTO-892)  
16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .  
18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .  
19)  Notice of Informal Patent Application (PTO-152)  
20)  Other: \_\_\_\_\_ .

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. **Claims 1-7, 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**
2. In claim 1, lines 9-10, it is not clear what the cavity is in "said applicator head further having a cavity formed in it for permitting skin to be drawn inwardly of it". This would appear to be describing the cavity formed at massage tip 53. This is the location where the skin would be drawn inwardly however, this is part of the applicator. The applicator is removably attached to the massage head. As understood the applicator head 15 does not include a cavity formed for permitting skin to be drawn inwardly of it. Where in the drawings is this cavity?

### ***Claim Rejections - 35 USC § 102***

3. **Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Holt.** As understood, it is maintained that Holt teaches everything claimed. While the Holt device is different from the instant invention, the claims do not define over Holt. Figure 2 shows a massage head 10 driven by a motor through a cable 12 (figure 1). Figure 4 shows the different parts of the applicator and how it is removably mounted by the screw threads in the top of housing at 20 onto nipple 16. The nipple 16 is tubular shaped and the portion of the applicator housing mating with nipple 16 is likewise tubular shaped. Therefore, the applicator has a connection tube integrally formed in said applicator. Element 25 forms a plurality of cavities 26

permitting skin to be drawn inwardly of it. It would appear Holt includes all of the positively recited claim limitations.

*Claim Rejections - 35 USC § 103*

**4. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt.**

Regarding claim 2, Holt appears silent with regard to any controls for the motor however, the ability to adjust the speed of the motor is well within the realm of the artisan of ordinary skill. It would have been obvious to one of ordinary skill in the art to modify Holt to provide speed control for the motor in order to adjust the vibration of the device. Regarding claim 3, it would have been obvious to one of ordinary skill in the art to modify Holt to provide a collection vise for the vacuum in order to catch any particulate matter from blowing all over from the motor. Holt shows holes in the sides of the housing allowing any particulate matter to blow all over the area. Most vacuum cleaners have a collection means for capturing the particulate matter.

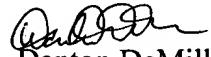
**5. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt in view of Howerin.** It would have been obvious to one of ordinary skill in the art to modify Holt to provide a second vise in the vacuum line to collect any liquid as taught by Howerin to catch any liquid to prevent damage or impairing its efficiency.

**6. Claims 6, 7, 9 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt in view of Marshall et al. and Rohrer.** Holt appears silent with regard to the details of the controls of the motor. Providing some conventional means to control the motor would appear to be well within the realm of the artisan of ordinary skill. Marshall teaches a conventional vacuum massaging system which includes controls for both the vibrator and the

vacuum source. There also appears to be no unobviousness to the shape of the applicator. Shaping the applicator to be concave as taught by Rohrer to better conform to the shape of the human body would have been an obvious provision. It would have been obvious to one of ordinary skill in the art to modify Holt to use a motor control system as taught by Marshall to best control the operation of the device and to shape the applicator to be concave as taught by Rohrer to better conform to the shape of the human body. If the vibration of Holt's device is too much it would be obvious to turn down the speed of the motor. Means to provide such a function would be necessary.

7. **Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 18 above, and further in view of Howerin.** It would have been obvious to one of ordinary skill in the art to further modify Holt to provide a second vile in the vacuum line to collect any liquid as taught by Howerin to catch any liquid to prevent damage or impairing its efficiency.

ddd  
4 May, 2001  
(703) 308-3713  
Fax: (703) 305-3590  
[danton.demille@uspto.gov](mailto:danton.demille@uspto.gov)

  
Danton DeMille  
Primary Examiner  
Art Unit 3764